

CLAS CIRCULAR 2011/13 (20 JULY 2011)

Disclaimer

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EMPLOYMENT

Religion and belief in the workplace

For information.

In Circular 2011/12 we mentioned that (to the astonishment of many – not least the Secretary of CLAS) the Chair of the Equality and Human Rights Commission, Trevor Phillips, had sounded off about the business of the Commission being “defending the believer” and stating that he and his colleagues wanted “to do more to build a body of case law in this area”.

It now transpires that the Commission is seeking to intervene in two sets of conjoined cases currently before the European Court of Human Rights all involving religious discrimination in the workplace: *Nadia Eweida & Shirley Chaplin v United Kingdom* ([Application Nos 48420/10 and 59842/10](#)) and *Lillian Ladele & Gary McFarlane v United Kingdom* ([Application Nos 51671/10 and 36516/10](#)). *Eweida* and *Chaplin* are about wearing religious symbols – a cross and a crucifix respectively – with uniform, while *Ladele* and *McFarlane* are about refusal on religious grounds to provide services to same-sex couples. Brief case-notes are available on website of the Law and Religion Scholars' Network [here](#).

The Commission's [press release](#) suggests that there is a need for clearer legal principles to help the courts consider what is and what is not justifiable in religion or belief cases and that this would help to resolve differences without resorting to legal action. If it is given permission to intervene the Commission will propose the idea of ‘reasonable accommodations’ that will help employers and others manage how they allow people to manifest their religion or belief: for example, if a Jew asks not to work on Saturdays for religious reasons, his employer could (possibly) accommodate this with minimum disruption simply by changing the rota.

The announcement provoked mixed reactions. A group of MPs tabled an [Early Day Motion](#) welcoming the move. On the other hand, some gay rights activists are concerned that it signals a shift in the Commission's views on potential clashes between protection from discrimination on grounds of sexual orientation and protection of religious freedom. The EHRC responded to criticism with a further clarificatory statement as follows:

We do not and will not licence discrimination against anyone and on any grounds and we will continue to take action to eliminate it. Under no circumstances does the Commission condone or permit the refusal of public services to lesbian or gay people.

The accommodation of rights is not a zero sum equation whereby one right cancels out or trumps another. We believe that if the law and practice were considered more widely, then, in many situations, there would be scope for diverse rights to be respected. We want to change the view that there needs to be an either/or situation.

The spotlight and focus is placed too frequently on conflict in place of dialogue that could help identify other acceptable workable solutions. We believe that, where possible, ways could be found within the law of promoting the resolution of disputes at an early stage, without protracted, costly, complex legal proceedings that irretrievably damage relations between the parties.

(This does not appear on the EHRC website – we picked it up from the admirable [UK Human Rights blog](#) written by members of the chambers at 1 Crown Office Row.)

We await further developments. But even if, as is probable, the EHRC is given leave to intervene, the outcome of the two sets of conjoined cases is highly unpredictable and, in any case, it is very unlikely that judgment will be handed down much before 2013.

[Sources: *Equality and Human Rights Commission News* – 21 June & 11 July 2011]

ODDS & ENDS

Cheque-clearing: the dénouement

For information.

As we mentioned in our e-mail on 12 July, the Payments Council has announced that cheques will continue for as long as customers need them and that the target for possible closure of the cheque-clearing system in 2018 has been scrapped.

As members will be aware, the use of cheques has been declining by ten per cent year-on-year; and there will undoubtedly come a time when so few cheques are being written that it will become totally uneconomic to keep the system going. However, the voluntary sector (including CLAS) has been pressing the argument that we have not yet reached that point and that to set an arbitrary date for closure before a simple, fool-proof alternative system is in place would be entirely unreasonable.

Where we go from here is not yet clear. The e-mail to the Charity and Voluntary Sector Liaison Group from the Payments Council announcing the change of heart said that "further details on our next steps will be shared with you in due course along with details of how we would like to work with you to ensure that the charity and voluntary sector has the full range of payment options for its needs". We will continue to take part in the Liaison Group and keep you informed of developments.

[Source: *Payments Council e-mail* - 12 July 2011]

Equality Act 2010 (Specific Duties) Regulations 2011

For information.

On 5 April 2011 the Government brought into force the public sector equality duty, contained in section 149 of the Equality Act 2010, for public authorities in Great Britain. The equality duty requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations. The Government has now laid before Parliament for approval the draft [Equality Act 2010 \(Specific Duties\) Regulations 2011](#). The Regulations will require those public authorities to publish equality objectives, at least every four years and information to demonstrate their compliance with the equality duty, at least annually. The latter will need to include, in particular, information relating to their employees (for authorities with 150 or more staff) and others affected by their policies and practices, such as service users.

With the exception of schools, public authorities will be required to publish relevant information demonstrating their compliance by 31 January 2012 and their first equality

objectives by 6 April 2012. (Schools will be required to publish both their information and their equality objectives by 6 April 2012.)

The vast majority of Church charities are not “public authorities”: the only charities directly affected by the draft Regulations are universities – all of which (so far as we are aware) are charities. However, the draft Regulations are indicative of the general direction of travel, and one cannot help wondering whether at some point this will be extended to bodies in receipt of public funds. Should that happen, a lot of Church charities will be drawn into the net.

[Source: HC Deb 28 June 2011 WMS]

Open Public Services White Paper

For information.

The Cabinet Office has published the Government's [Open Public Services White Paper](#), setting out the Government's approach to public services by applying five key principles: choice, decentralisation, diversity, fairness and accountability. The accompanying blurb says that the delivery of public services is not always consistent, “with the most poor often being the most affected. Our old-fashioned, centralised approach means there's too much ‘take what you're given’ and not enough focus on improvement and accountability”. Open Public Services is intended to “encourage innovation and give people more choice and control over the services they use by putting power directly in the hands of millions of families and thousands of communities”.

Perhaps surprisingly – given that this *is* a White Paper – the Government is inviting “your suggestions and ... your priorities” and has set up a [dedicated website](#) for responses. On-line responses are requested by **the middle of September**.

[Source: *Cabinet Office News* – 11 July 2011]

PROPERTY & PLANNING

Social housing

Possibly for action by church housing trusts.

DCLG is consulting on [draft directions](#) proposed to be given by the Secretary of State for Communities and Local Government to the Social Housing Regulator under section 197 of the Housing and Regeneration Act 2008. DCLG is proposing to direct the Regulator on tenure, mutual exchange, tenant involvement and empowerment, rents and quality of accommodation. These directions will replace those issued by the previous Government. The consultation closes on **29 September**.

[Source: *DCLG Consultations* - 11 July 2011]

Non-domestic rates, charities and church buildings

**For information: but
do make sure that your church buildings are
registered with your local authority**

Members will be aware that there has been some concern about the future of the 20 per cent discretionary relief on non-domestic rates once the Localism Bill is enacted and comes into operation. The matter was raised during the committee stage in the House of Lords, on a notice to oppose Clause 39 stand part tabled by the Chairman of CLAS. In the course of [the debate](#) on 28 June the Minister, Lord Shutt of Greetland, gave a firm assurance that the terms of the Clause were not meant to disturb the present criteria for granting charities discretionary relief from non-domestic rates. "The message," said Shutt, "is that there is to be no change in relief for charities. Whether it is mandatory or discretionary, the answer is, 'No change'. There is no element of change in this provision". He admitted that the drafting was "a bit convoluted". He also assured the House that the reference to "fine arts" was already in the Local Government Finance Act 1988 and no change was therefore implied by the use of the term in Clause 39.

The issue came up again in a rather roundabout way in an exchange between Westminster City Council and DCLG, the Government side of which was [published under FoI](#). Reading between the lines, Westminster had evidently asked whether the Church of Scientology qualified for charity relief from non-domestic rates. Bob Neill, the Parliamentary Under Secretary of State, pointed out that the Church of Scientology is not a charity and does not receive the exemption from non-domestic rates for places of worship. But, as mentioned in a recent Circular, **places of worship only qualify for exemption if they are registered**, and the onus is on the Church in question to register its buildings rather than on the local authority to make assumptions.

[Source: HL Deb (2011) cc 1724–1732: *DCLG Website* – 18 July 2011]

TAXATION

VAT: welfare services

Information for **service-providers** especially.

HMRC has issued an updated [VAT Notice 701/2](#) on welfare. It should be consulted by organisations that:

- supply or purchase care, treatment, welfare advice or instruction services; or
- supply or purchase services relating to the provision of spiritual welfare.

[Source: *HMRC What's New* - 3 July 2011]